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Fifty-eighth session
Sixth Committee
Agenda item 158
International convention against the reproductive cloning of human beings

Belarus, Belgium, Brazil, China, Czech Republic, Denmark, Finland, Iceland, Japan, Liechtenstein, South Africa, Sweden, Switzerland and United Kingdom of Great Britain and Northern Ireland: draft resolution

International convention against the reproductive cloning of human beings

The General Assembly,

Recalling the Universal Declaration on the Human Genome and Human Rights,[1] adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 11 November 1997, in particular article 11 thereof, which states that practices that are contrary to human dignity, such as reproductive cloning of human beings, shall not be permitted,

Recalling also its resolution 53/152 of 9 December 1998, by which it endorsed the Universal Declaration on the Human Genome and Human Rights,

Bearing in mind Commission on Human Rights resolution 2003/69 of 25 April 2003, entitled "Human rights and bioethics",[2] adopted by the Commission at its fifty-seventh session,

Mindful of the importance of the development of the life sciences for the benefit of mankind, with full respect for the integrity and dignity of the human being,

Aware that the rapid development of the life sciences opens up prospects for the improvement of the health of individuals and mankind as a whole, but also that certain practices pose potential dangers to the integrity and dignity of the individual,

[1] United Nations Educational, Scientific and Cultural Organization, *Records of the General Conference, Twenty-ninth Session*, vol. 1, *Resolutions*, resolution 16.

[2] See *Official Records of the Economic and Social Council, 2003, Supplement No. 3* (E/2003/23), chap. II, sect. A.

03-53916 (E) 021003

Concerned by the seriousness of problems posed by the development of techniques of reproductive cloning of human beings applied to mankind, which may have consequences for respect for human dignity,

Particularly concerned, in the context of practices that are contrary to human dignity, at recently disclosed information on research into and attempts at the reproductive cloning of human beings,

Determined to prevent, as a matter of urgency, such an offence to human dignity,

Recalling its resolution 56/93 of 12 December 2001, by which it decided to establish an Ad Hoc Committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, for the purpose of considering the elaboration of an international convention against the reproductive cloning of human beings,

Determined to adopt provisional measures at the national level to prevent potential dangers to the human dignity of the individual pending the adoption and entry into force of an international convention against the reproductive cloning of human beings,

1. *Welcomes* the report of the Working Group of the Sixth Committee on its work from 29 September to 3 October 2003;

2. *Decides* that the Ad Hoc Committee shall be reconvened from ___to ___ February and from ___ to ___ September 2004 in order to prepare, as a matter of urgency and if possible by the end of 2004, a draft international convention against the reproductive cloning of human beings;

3. *Requests* the Ad Hoc Committee, in developing the draft convention, to include the following elements:

(a) An obligation on all contracting parties to ban reproductive cloning of human beings with no possibility of making any reservations;

(b) An obligation on all contracting parties to take action to control other forms of human cloning by adopting a ban or imposing a moratorium or regulating them by means of national legislation;

4. *Also requests* the Ad Hoc Committee to take into consideration the relevant existing international instruments;

5. *Calls upon* those States that have not yet done so, pending the adoption and entry into force of an international convention against the reproductive cloning of human beings and their becoming party thereto, to adopt at the national level a prohibition against reproductive cloning of human beings;

6. *Also calls upon* those States that have not yet done so, pending the adoption and entry into force of an international convention against the reproductive cloning of human beings and their becoming party thereto, to take action to control other forms of human cloning by adopting a ban or imposing a moratorium or regulating them by means of national legislation;

7. *Requests* the Secretary-General to provide the Ad Hoc Committee with the facilities necessary for the performance of its work;

8. *Invites* the Ad Hoc Committee to take into consideration the contributions of United Nations bodies and to closely involve the United Nations Educational, Scientific and Cultural Organization, the World Health Organization and the United Nations Conference on Trade and Development in the process of negotiations;

9. *Requests* the Ad Hoc Committee to report on its work to the General Assembly at its fifty-ninth session;

10. *Decides* to include in the provisional agenda of its fifty-ninth session the item entitled "International convention against the reproductive cloning of human beings".

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Fifty-eighth session
Sixth Committee
Agenda item 158
International convention against the reproductive cloning of human beings

International convention against the reproductive cloning of human beings

Report of the Working Group

Chairman: Mr. Juan Manuel **Gomez Robledo** (Mexico)

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I. Introduction

1. The General Assembly, in its resolution 56/93 of 12 December 2001, decided to establish the Ad Hoc Committee on an International Convention against the Reproductive Cloning of Human Beings, to consider the elaboration of a mandate for the negotiation of an international convention against the reproductive cloning of human beings, including a list of existing international instruments to be taken into consideration and a list of issues to be addressed in the convention. The Assembly also recommended that the work continue during its fifty-seventh session, within the framework of a working group of the Sixth Committee.

2. Subsequently, in its decision 57/512 of 19 November 2002, the General Assembly decided that a working group of the Sixth Committee should be convened during the fifty-eighth session of the Assembly from 29 September to 3 October 2003 in order to continue the work undertaken during the fifty-seventh session.

3. Accordingly, the Sixth Committee, at its 1st meeting of the fifty-eighth session, on 29 September 2003, established such a Working Group open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. The Committee also elected Juan Manuel Gomez Robledo (Mexico) as the Chairman of the Working Group.

4. The Working Group held 5 meetings, from 29 September to 3 October 2003.

5. The Working Group had before it its report on its previous session (A/C.6/57/L.4), the report of the Sixth Committee during the fifty-seventh session (A/57/569), the revised version of the information document prepared by the Secretariat containing, inter alia, a list of relevant international instruments on human cloning (A/AC.263/2002/INF/1/Rev.1), a draft international convention for the prohibition of all forms of human cloning and a brief explanatory commentary thereon submitted by Costa Rica (see A/58/73) and a paper submitted by the Holy See (A/C.6/58/WG.1/CRP.1).

6. The Working Group considered and adopted its report at its 5th meeting, on 3 October.

II. Proceedings of the Working Group

7. The Working Group held a general exchange of views at its 1st, 2nd and 3rd meetings, on 29 and 30 September and 2 October. An informal summary of the general discussion in the Working Group, prepared by the Chairman, is included in annex II to the present report. The summary is intended for reference purposes only, and not as an official record of the discussions.

8. The Working Group also decided to hear a statement by the representative of the United Nations Educational, Scientific and Cultural Organization (UNESCO) at its 1st meeting, on 29 September.

9. Discussions were subsequently held both in the Working Group and in informal consultations.

Elaboration of a mandate for the negotiation of an international convention against the reproductive cloning of human beings

10. The Working Group held informal consultations, chaired by Bart Wijnberg (Netherlands), concerning the consideration of the elaboration of a mandate for the negotiation of an international convention against the reproductive cloning of human beings, on 1 and 2 October.

III. Recommendations and conclusions

11. At its 5th meeting, on 3 October, the Working Group decided to refer the present report to the Sixth Committee for its consideration and recommended that the Committee continue the consideration of the elaboration of a negotiatio mandate during the current session, taking into account the discussions ir the Working Group.

Annex I

Written amendments and proposals submitted by delegations

Paper submitted by the Holy See (A/C.6/58/WG.I/CRP.1)

Views of the Holy See on human embryonic cloning

1. The Holy See strongly supports the advancement of human biological sciences and agrees with the procurement of human stem cells, as long as they are not harvested from live embryos, that is, so-called "adult" stem cells. It also supports the use for research or therapeutic purposes of these "adult" stem cells and of any material derived from them, provided that this use is pursued in a way that does not offend human dignity and, if applied clinically, respects the principle of full informed consent. The procurement, research and potential therapies with "adult" stem cells meet, in principle, these moral criteria, and as far as is known, they also contain a great scientific promise.

2. The difference between "reproductive" cloning and "research" cloning (so-called "therapeutic" cloning) consists only in the objective of the procedure: in "reproductive" cloning one intends to develop a child by implanting the cloned embryo in a womb. In "research" cloning, one intends to use the cloned embryo in such a way that it is ultimately destroyed. To ban "reproductive" cloning only, without prohibiting "research" cloning, would be to allow the production of individual human lives with the intention of destroying these lives as part of the process of using them for scientific research. The early human embryo, not yet implanted into a womb, is nonetheless a human individual, with a human life, and evolving as an autonomous organism towards its full development into a human foetus. Destroying this embryo is therefore a grave moral disorder, since it is the deliberate suppression of an innocent human being.

3. The Holy See believes that these forms of artificial asexual and agamic reproduction to create human embryos gravely offend the dignity of the human race and the dignity of human life. No one should ever do evil in order to achieve a good. When, in an effort to advance human science or to help human beings in need, one faces a choice between an unobjectionable means, such as "adult" stem cells, and a means that is universally recognized as raising profound ethical questions, such as "research" cloning, prudence dictates choosing only the unobjectionable means. Therefore, even those who do not share the view that the cloned human embryo has full human dignity should still be opposed to all forms of human embryonic cloning.

4. It is the view of the Holy See that any possible attempt to limit a ban on human cloning to that undertaken for reproductive purposes would be nearly impossible to enforce since human embryos cloned for research purposes would be widely available and would have the potential to be brought to birth simply by transfer to a womb using procedures employed for artificially assisted reproduction. Since human reproductive cloning is universally condemned, only a complete ban on all forms of human embryonic cloning would achieve the goal of prohibiting human reproductive cloning.

5. Further, if research cloning were permitted, it would require, to be effective, a large number of human oocytes. The Holy See is concerned by this prospect for

several reasons. In the first place, the process would use the body of women as a reservoir of oocytes without any consideration being given to the number of donations and her procreative future. In the second place, the massive demand for human oocytes would disproportionately affect the poor and marginalized of the world bringing a new type of injustice and discrimination into existence.

6. Human cloning would encourage the development of a trade in cloned human embryos and their derivatives for scientific research or for industrial research and development purposes. Therefore, an explicit prohibition of such exchanges regardless of whether they are commercial or not should be enacted. No intellectual property rights should be granted to information or technologies specific to human cloning.

7. The Holy See seeks a complete and explicit prohibition on all techniques of creating new individual human embryos by cloning, including somatic cell nuclear transfer, embryo splitting and other similar techniques that may develop in the future. This prohibition must also encompass parthenogenesis and the creation of human-animal "chimeric embryos" by nuclear transfer.

17 July 2003

Annex II

Informal summary of the general discussion in the Working Group, prepared by the Chairman

1. Many speakers reiterated their support for the continued consideration of the topic. However, it was noted with concern that, despite two years of discussing the topic in the General Assembly, limited progress had been made. Many speakers stressed the importance of reaching consensus on how to move forward on the issue. States were also called upon to make all efforts to reach such consensus on a negotiation mandate, leading to the commencement of the negotiations soon thereafter, thereby sending an important signal to the international community. Strong support was also expressed for retaining the item in the agenda of the Assembly.

2. However, the general discussion continued to reveal a divergence of views among delegations. Some speakers spoke in favour of an international convention prohibiting all forms of human cloning, as proposed in draft resolution A/C.6/58/L.2. There was concern that developments in the medical sciences and genetic research, despite the possibility that they offered curing diseases, could be used to breach human rights and to violate the intrinsic dignity of all human beings. Indeed, it was stated that the dignity of human life did not tolerate the testing of human embryos, whatever the objective. In that regard, the view was expressed that an embryo was a human being in the earliest stages of formation and thus the killing of embryos for therapeutic purposes constituted a grave attack on the dignity of mankind. It was also pointed out that human cloning degraded the human being into a mere object of industrial production and manipulation.

3. The view was likewise expressed that cloning for "therapeutic" or "experimental" purposes was inherently risky, especially for donor women. Indeed, concern was expressed that the demand for human eggs would disproportionately affect the poor and marginalized women, resulting in a new form of discrimination. Similarly, the prospect of the successful development of therapeutic techniques was considered limited, and of dubious value, especially in the light of the serious ethical implications it raised, arising from the deliberate production and destruction of human embryos. Instead, a preference was expressed for adult stem cell research as a viable alternative with proved results. In terms of another suggestion, States were urged to allocate those funds that would otherwise be spent on human cloning techniques, towards other issues such as human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), infant mortality and morbidity, famine and desertification.

4. It was also stated that a partial ban, limited only to cloning for reproductive purposes, would be a false ban, since it would be confusing, ineffective and impossible to enforce. It would also lead to the unacceptable result of embryos' being exploited as commodities for commercial use. Instead, only a complete ban on all forms of human embryonic cloning would achieve the goal of prohibiting human reproductive cloning, and would be more durable. Similarly, an all-inclusive convention would properly allow States to formulate appropriate domestic legislation on human cloning.

5. Some other speakers were of a different view. It was recalled that the mandate of the Working Group was limited to establishing a negotiation mandate for the elaboration of an international convention against the reproductive cloning of human beings. The Working Group's attention was drawn to recent announcements of the birth of cloned humans, which, although not confirmed, had highlighted the urgent need for an international ban on reproductive cloning of human beings. It was stated that a lack of universally binding regulations dealing with any type of cloning of human beings constituted an open invitation for certain scientists to undertake the kind of research which was considered by all to be morally repugnant and contrary to human dignity. Indeed, some speakers, supporting a narrower ban on cloning for reproductive purposes, pointed out that their own domestic legislation already banned all forms of cloning. Hence, their support for a narrower approach was based solely on pragmatic reasons: it was viewed as the only possible basis on which to achieve consensus at the international level. Support was thus expressed for the revised Franco-German non-paper espousing a negotiating mandate for a comprehensive convention that would, on the one hand, adopt a strict ban on cloning of human beings for reproductive purposes, while, on the other, seek to regulate other forms of cloning by giving future States parties the option either to ban or impose a moratorium on such types of cloning or otherwise to regulate them by means of national legislation.

6. Several other speakers also described activities undertaken at the national level, inter alia, through legislation, to regulate human embryonic research for non-reproductive purposes. It was pointed out that the decision to allow such research had followed from an extensive national debate and internal consultation process, and that the legislation in question provided robust safeguards for the protection of the embryo, such as national monitoring mechanisms, while strictly prohibiting cloning for reproductive purposes. The view was expressed that therapeutic cloning research, as such, should be allowed to continue in countries that had reached a national consensus on the issue and had put into place a rigorous and effective system of regulation of embryo research. Indeed, several speakers also pointed to the potential that therapeutic cloning offered for curing disease and improving human life; and reference was made to recent statements, emanating from within the international scientific community, expressing support for a ban on reproductive cloning, while allowing therapeutic cloning to continue. It was observed that, given the complexity of the issue, an approach that respected the diversity of views and beliefs among States offered the greater chance of success. Such an approach would also enjoy the benefit of taking into account the views of those States whose national laws banned cloning only for reproductive purposes, but allowed research, including on human embryos, for non-reproductive purposes, albeit strictly regulated.

7. Other suggestions included agreeing on a general mandate for negotiation, so as to commence the work, albeit without stipulating at this stage the scope of the future convention; and calling for a moratorium on such activities, although it was cautioned that the General Assembly did not have the authority to impose a binding moratorium on States. It was also suggested that the Working Group consider the economic, sustainable development and human rights implications of the subject, in particular with regard to gender, children and indigenous peoples.

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Sixth Committee
Agenda item 156
Measures to eliminate international terrorism

Measures to eliminate international terrorism

Report of the Working Group

Chairman: Mr. Rohan Perera (Sri Lanka)

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I. Introduction

1. The General Assembly, in its resolution 57/27 of 19 November 2002, decided that the Ad Hoc Committee established by resolution 51/210 of 17 December 1996 should meet from 31 March to 2 April 2003 to continue the elaboration of a draft comprehensive convention on international terrorism, with appropriate time allocated to the continued consideration of outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism, and that it should keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The Assembly also decided that the work should continue, if necessary, during the fifty-eighth session of the Assembly, within the framework of a working group of the Sixth Committee. At its 29th meeting, on 2 April 2003, the Ad Hoc Committee decided to recommend that the Sixth Committee, at the fifty-eighth session of the General Assembly, consider establishing such a working group, if appropriate.[1]

2. At its 2nd meeting, on 6 October 2003, the Sixth Committee established a Working Group and elected Rohan Perera (Sri Lanka) as its Chairman. At the same meeting, the Committee decided to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency.

3. The Working Group held three meetings, on 6, 8 and 10 October 2003. At its first meeting, the Working Group decided that the members of the Bureau of the Ad Hoc Committee elected at the latter's seventh session would continue to act as Friends of the Chairman during the meeting of the Working Group.

4. The Working Group had before it the report of the Ad Hoc Committee on the work of its seventh session,[2] containing, inter alia, the reports of the coordinators on the results of the informal bilateral consultations on the draft comprehensive convention on international terrorism and on the draft international convention for the suppression of acts of nuclear terrorism;[3] the report of the Ad Hoc Committee on the work of its sixth session,[4] containing, inter alia, a discussion paper prepared by the Bureau on the preamble and article 1 of the draft comprehensive convention,[5] a list of proposals made during the informal consultations on the preamble and article 1 of the draft comprehensive convention appended to the report of the coordinator on the results of the informal consultations in the Ad Hoc Committee,[6] the informal texts of articles 2 and 2 bis of the draft comprehensive convention prepared by the Coordinator,[7] the texts of articles 3 to 17 bis and 20 to 27 of the draft comprehensive convention prepared by the Friends of the Chairman[8] and two texts relating to article 18 of the draft comprehensive convention, one circulated by the Coordinator for discussion and the other proposed by the States members of the Organization of the Islamic Conference.[9] The Working Group also had before it the report of the Working Group of the Sixth Committee established at the fifty-seventh session of the General Assembly (A/C.6/57/L.9), containing in its annexes I.A and B the lists of written amendments and proposals submitted in connection with the elaboration of a draft comprehensive convention, the revised text of a draft international convention for the suppression of acts of nuclear terrorism proposed by the Friends of the Chairman (A/C.6/53/L.4, annex I) and written amendments and proposals submitted by delegations in relation to that instrument.[10]

5. Annex I.A to the present report contains a list of written amendments and proposals submitted by delegations to the Working Group of the Sixth Committee at the fifty-eighth session of the General Assembly in connection with the elaboration of a draft comprehensive convention on international terrorism.

6. Annex I.B contains a list of written amendments and proposals submitted at the sixth session of the Ad Hoc Committee in connection with the elaboration of a draft comprehensive convention on international terrorism (A/C.6/57/L.9, annex I.A).

7. Annex I.C contains a list of written amendments and proposals submitted by delegations to the Working Group of the Sixth Committee at the fifty-sixth session of the General Assembly in connection with the elaboration of a draft comprehensive convention on international terrorism (A/C.6/57/L.9, annex I.B).

8. Annex I.D contains a list of written amendments and proposals submitted by delegations to the Working Group of the Sixth Committee at the fifty-sixth session of the General Assembly in connection with the elaboration of a draft international convention for the suppression of acts of nuclear terrorism (A/C.6/57/L.9, annex I.C).

II. Proceedings of the Working Group

9. At its 1st meeting, on 6 October, the Working Group adopted its work programme and decided to proceed with discussions in informal consultations. The Chairman appointed Carlos Fernando Díaz Paniagua (Costa Rica) as the Coordinator for the draft comprehensive convention on international terrorism and Albert Hoffmann (South Africa), as the Coordinator for the draft international convention for the suppression of acts of nuclear terrorism. The Chairman also invited interested delegations to approach him on the question of convening a high-level conference, under the auspices of the United Nations, to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

10. The Chairman urged delegations to focus on ways and means of resolving outstanding issues rather than engaging in the repetition of national positions, which would not be fruitful in advancing the work at this stage. He also called upon delegations to turn their minds to new constructive approaches that would enable the Working Group to move forward to a conclusion.

11. An informal summary by the Chairman of an exchange of views that took place at the 1st and the 2nd meetings of the Working Group is contained in annex III below. The informal summary is intended for reference purposes only and not as a record of discussions.

12. On 7 October, informal consultations were held in two stages. The first, coordinated by Mr. Paniagua, was devoted to the draft comprehensive convention. In the second stage, the informal consultations coordinated by Mr. Hoffmann focused on outstanding issues pertaining to the draft international convention for the suppression of acts of nuclear terrorism. The Coordinators also held bilateral consultations on 7 and 8 October.

13. At the 2nd meeting of the Working Group, on 8 October, the Coordinators presented their oral reports on the results of the informal consultations; those reports are contained in annex II below, also for reference purposes only and not as a record of the discussions. The Chairman also informed the Working Group that in his contacts with several delegations on the question of convening a high-level conference, they had informed him that consultations on this question were continuing at a political level in their capitals. They had expressed the wish that the item be kept on the agenda in accordance with General Assembly resolution 57/27.

14. The Working Group considered and adopted its report at its 3rd meeting, on 10 October.

III. Recommendations and conclusions

15. At its 3rd meeting, the Working Group decided to refer the consideration of the present report to the Sixth Committee. The Working Group also decided, bearing in mind General Assembly resolution 57/27, to recommend to the Sixth Committee that work continue with the aim of finalizing the text of a draft comprehensive convention on international terrorism and the text of a draft international convention for the suppression of acts of nuclear terrorism, building upon the work already accomplished.

Notes

[1] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 37* (A/58/37), para. 16.

[2] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 37* (A/58/37).

[3] Ibid., annexes II.A and B.

[4] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* and corrigendum (A/57/37 and Corr.1).

[5] Ibid., annex I.

[6] Ibid., annex VI, appendix.

[7] Ibid., annex II.

[8] Ibid., annex III.

[9] Ibid., annex IV.

[10] Ibid., annex V.B.

Annex I

Amendments and proposals*

A. List of written amendments and proposals submitted by delegations to the Working Group of the Sixth Committee at the fifty-eighth session of the General Assembly in connection with the elaboration of a draft comprehensive convention on international terrorism

Author	*Symbol*	*Subject*
Guatemala	A/C.6/58/WG.2/CRP.1	Article 2 ter

Proposal submitted by Guatemala (A/C.6/58/WG.2/CRP.1): additional article 2 ter

1. In any case where an offence has been committed to which both this Convention and any one of the treaties mentioned in the preamble thereof applies, the following rules shall, with respect to that offence, apply to the relations between, as the case may be:

(a) A State party to this Convention but not to that other treaty *and* a State party to that other treaty but not to this Convention, or

(b) A State party to that other treaty but not to this Convention *and* a State party to this Convention but not to that other treaty.

2. The former of the two States referred to in (a) or (b) of the preceding paragraph may notify the other in writing that, in its relations with it and in connection with the offence, it undertakes to apply, subject to reciprocity, all or certain of the substantive provisions of this Convention, if (a) applies, or of the other treaty, if (b) applies. Upon receipt by the notifying State of the acceptance of this undertaking by the State to which the notification was addressed, both States shall, in their relations with one another and with respect to the offence, be bound by all the provisions of this Convention or of the other treaty, or those specified in the notification, as the case may be.

3. Alternatively, the latter of the two States referred to in (a) or (b) of paragraph 1 above may notify the other in writing that, in its relations with it and in connection with the offence, it undertakes to apply, subject to reciprocity, all or certain of the substantive provisions of this Convention, if (a) applies, or of the other treaty, if (b) applies. Upon receipt by the notifying State of the acceptance of this undertaking by the State to which the notification was addressed, both States shall, in their relations with one another and with respect to the offence, be bound by all the provisions of this Convention or of the other treaty, or those specified in the notification as the case may be.

4. The acceptance of the undertaking under paragraph 1 above shall, upon its receipt by the State to which it is addressed, be immediately conveyed by it to the Secretary-General. If the notification was made by a State party to this Convention, the Secretary-General shall convey the acceptance to the other States parties thereto. If the notification was made by a State party to the other treaty, the Secretary-

General shall, if it is the depositary thereof, convey the acceptance to the other States parties thereto. If the Secretary-General is not the depositary of that treaty, the Secretary-General shall convey the acceptance to the depositary thereof.

Explanatory comments

5. The new article proposed, which draws inspiration from the last sentence of article 2 common to the four 1949 Geneva Conventions for the protection of victims of war, seeks to permit, encourage and, above all, facilitate the expeditious conclusion, on a bilateral and reciprocal basis, of ad hoc, inter se agreements to fill the gap that exists between two States whenever an offence is committed that is covered by both the comprehensive convention and any one of the so-called sectoral counter-terrorism treaties but one of the States is party to the latter but not to the former, or whenever the opposite is the case.

6. The reason why paragraph 2 allows a State making the notification provided for therein to choose between being bound by all the substantive provisions of the treaty to which the notification refers or only certain of them is that the need to obtain parliamentary approval may prevent it from arranging to be bound, within the time limit imposed by the circumstances, by all the provisions of the treaty.

7. Admittedly, the mechanism established by this new article is a novel one and may accordingly appear unorthodox. It is felt, however, that the mechanism, which does not seem to be incompatible with the law of treaties, is workable, minimizes complications and could thus function smoothly and usefully in practice.

B. List of written amendments and proposals submitted at the sixth session of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 in connection with the elaboration of a draft comprehensive convention on international terrorism

Author	*Symbol*	*Subject*
1. Bureau	A/57/37,[1] annex I	Discussion paper on the preamble and article 1
2. Coordinator	Ibid., annex II	Informal texts of articles 2 and 2 bis
3. Friends of the Chairman	Ibid., annex III	Texts of articles 3 to 17 bis and 20 to 27
4. Coordinator	Ibid., annex IV	Text relating to article 18
5. Member States of the Organization of the Islamic Conference	Ibid.	Text relating to article 18

[1] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* and corrigendum (A/57/37 and Corr.1).

C. List of written amendments and proposals submitted by delegations to the Working Group of the Sixth Committee at the fifty-sixth session of the General Assembly in connection with the elaboration of a draft comprehensive convention on international terrorism

Author	*Symbol*[1]	*Subject*
1. Guatemala	A/C.6/56/WG.1/CRP.1 and Corr.1	Revised version of document A/C.6/56/L.2; additional article (provisionally numbered 22A)
2. Hungary	A/C.6/56/WG.1/CRP.2	Article 2
3. Friends of the Chairman	A/C.6/56/WG.1/CRP.3	Revised texts of articles 3-17, 17 bis, 20 and 22
4. Colombia	A/C.6/56/WG.1/CRP.4	New first preambular paragraph
5. —	A/C.6/56/WG.1/CRP.5 and Add.1-5	Draft report of the Working Group
6. Holy See	A/C.6/56/WG.1/CRP.6	Article 10, para. 4 bis
7. Holy See	A/C.6/56/WG.1/CRP.8	Article 12

[1] Document A/C.6/56/WG.1/CRP.7 was withdrawn.

D. List of written amendments and proposals submitted by delegations to the Working Group of the Sixth Committee at the fifty-sixth session of the General Assembly in connection with the elaboration of a draft international convention for the suppression of acts of nuclear terrorism

Author	*Symbol*	*Subject*
Mexico	A/C.6/56/WG.1/CRP.9	Article 4

Notes

[a] It is understood that further consideration will be given to these written amendments and proposals, together with all other written and oral proposals, in future discussions, including on outstanding issues.

Annex II

Reports of the Coordinators on the results of the informal consultations

A. Draft comprehensive convention on international terrorism

1. On 7 October 2003, as Coordinator for the draft comprehensive convention on terrorism, I chaired informal consultations on the draft convention, which were open to all delegations. On 8 October, I held bilateral consultations with those delegations which chose to avail themselves of that opportunity. The focus of both sets of consultations was on draft articles 18 and 2 bis.

2. The two texts relating to article 18, one circulated by the former Coordinator for discussion and the other proposed by member States of the Organization of the Islamic Conference (OIC), are contained in annex IV to the 2002 report of the Ad Hoc Committee.[a] The informal text of article 2 bis prepared by the Coordinator is contained in annex II to the same report.

Article 18

3. Draft article 18 is perceived as central to the final solution on the overall draft convention package. However, views on the article continued to be divergent, with delegations expressing their preferences for either the text by the previous Coordinator or the OIC proposal. Expressing support for the OIC proposal, some delegations emphasized that it had been presented as a compromise text, which took into account proposals made by other delegations. The Coordinator's text was described, in turn, as a result of many concessions. Some delegations said that the Coordinator's text reflected their bottom-line position.

4. In the consultations, delegations paid particular attention to paragraphs 2 and 3 of the two texts. With regard to paragraph 2, in support of the OIC formulation, it was noted that because international humanitarian law applied to the activities of all the parties in situations of foreign occupation, it was logical to exclude them from the scope of the draft convention since such law would apply.

5. On the other hand, support was expressed for paragraph 2 of the former Coordinator's text. It was pointed out that it was based on the precedent of paragraph 2 of article 19 of the International Convention for the Suppression of Terrorist Bombings. It was also noted that its terms were more precise and clear. Unlike the broader term "parties" in the OIC proposal, the term "armed forces" was well-understood and generally accepted.

6. Concerning paragraph 3, it was emphasized that it had to be understood in the context of the whole draft article. It was recalled that some delegations had moved from their initial positions to support the Coordinator's text on that understanding. Further, it was suggested that the Coordinator's text should be perceived as a choice of law provision rather than a provision that sanctioned impunity for the military forces of a State. Other rules of international law, such as those concerning the use of force and the prohibition against genocide or torture, remained applicable. It was also recalled that the language was based on paragraph 2 of article 19 of the International Convention for the Suppression of Terrorist Bombings. Moreover, the wording "in conformity with international law" contained in the OIC proposal was

considered restrictive and would convert any violation of international law into a terrorist act for purposes of the Convention.

7. On the other hand, the delegations that spoke in support of the OIC proposal stressed that activities of the military forces of a State should be carried out in accordance with the Charter of the United Nations and international law. It was noted that it is not unusual for the same conduct to be governed by different bodies of law. It was also contended that those activities of military forces which are not governed by international humanitarian law should be covered by the draft convention. Excluding such activities would be contrary to the 1994 Declaration on Measures to Eliminate International Terrorism. It was further stressed that the draft convention focused on individual responsibility and that it was without prejudice to State responsibility.

Article 2 bis

8. With regard to article 2 bis, some delegations observed that it was closely linked to article 18 and that agreement on it would be dependent on the outcome of negotiations on and the content of article 18.

9. Views on the inclusion of this article remained divergent. Some delegations viewed it as redundant since, in their view, existing international law principles were sufficient to solve any conflict. Others noted that the provision was necessary since it would clarify the relationship between the comprehensive convention and sectoral conventions. In particular, such a provision would address the conflict that could arise as a consequence of the principles *lex posterior derogat priori* and *lex specialis derogat generali*.

10. The views of delegations on the actual drafting of article 2 bis were also varied. Considering that the draft convention was intended to be comprehensive, some delegations observed that it should supersede sectoral conventions. Others pointed out that the possibility of superseding would only arise in the case of conflict. In that connection, the current article 2 bis was considered too restrictive. Yet some other delegations viewed the current draft text as correctly stating their preferred position, giving precedence to the sectoral conventions. The position was expressed that article 2 bis could benefit from some drafting modifications.

Other issues

11. On other issues, an additional proposal was made for a new article 2 ter (see annex I.A above). The sponsor delegation noted that the proposal was intended to encourage States to conclude bilateral agreements for the application of the draft convention or a sectoral convention in situations where the States concerned intended to cooperate but were not parties to the same convention. In their preliminary comments, delegations noted that the text was complicated and that the proposed provision seemed unnecessary and would bring uncertainty in treaty relations. It was also noted that more time would be required for further reflection on the proposal.

12. During the bilateral consultations, some delegations suggested technical improvements on the draft convention, such as a merger of paragraphs 1 (b) and (c) of draft article 2 or the deletion of the reference to serious damage to the environment.

13. Also in the bilateral consultations, it was pointed out that the time was ripe to consider new proposals to overcome the current impasse. In that regard, it was suggested that it might be useful for delegations to continue to consult informally on the outstanding issues during the intersessional period. The view was expressed that, in order to reach agreement, we must go beyond the drafting of texts and muster the necessary political will to advance the process further.

Concluding remarks

14. Although there was no major breakthrough, the consultations proceeded quite smoothly and in a constructive spirit. While delegations continued to reiterate their positions, it seemed clear that the fundamental difference in substance lay largely in the formulation of article 18, which in my assessment remains the key provision. Agreement on this article would facilitate agreement on other issues. The actual scope of article 2 bis needs to be further clarified in light of discussions on article 18.

15. I thank all delegations that participated actively and constructively in the consultations.

B. Draft international convention for the suppression of acts of nuclear terrorism

16. As Coordinator for the draft international convention for the suppression of acts of nuclear terrorism, I held informal consultations open to all delegations on 7 October 2003. I also held informal bilateral consultations with some delegations on the same day and made myself available for further consultations on 8 October. The consultation focused on the revised text proposed by the Friends of the Chairman in October 1998.[b]

17. As in the previous session of the Ad Hoc Committee, the objective of the consultations was to review the situation in relation to the outstanding issues and to ascertain whether a possibility of resolving the differences existed.

18. As regards the issue of the scope of application of the draft convention (draft article 4), delegations reiterated their prior positions.

19. In this context, reference was also made to the proposal by Mexico,[c] which had been discussed during previous sessions of the Ad Hoc Committee and the Working Group of the Sixth Committee.

20. On the one hand, the point was made that draft article 4 should be retained since it constituted a well-balanced provision that would allow a positive outcome to the endeavour of adopting a convention. It was noted that the intent of the process was to elaborate a law enforcement convention, which therefore should not cover the use of nuclear weapons by States, an issue dealt with by other conventions. However, according to another position, article 4, paragraph 2 should be deleted since the scope of the convention should include the activities of the armed forces of a State.

21. In that connection, some delegations reiterated their support for the proposal by Mexico. Nonetheless, the point was also made that the Mexican proposal would not cover all the concerns expressed.

22. It was also stated that the lack of agreement on the draft convention would delay concluding work on a comprehensive convention against international terrorism, as well as on the process of amending the 1979 Convention on the Physical Protection of Nuclear Material, an endeavour undertaken in Vienna.

23. On the issue of dumping radioactive material, delegations were reminded of a proposal on the matter that had been made previously (see document A/C.6/53/WG.1/CRP.33, reproduced in A/C.6/53/L.4, annex II). There was no discussion of that proposal.

24. In conclusion, the views on the outstanding issues remain divergent, yet all delegations agreed on the need to retain the important progress achieved, reflected in the current text, and on the common interest in adopting a convention in the near future.

Notes

[a] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* and corrigendum (A/57/37 and Corr.1).

[b] See A/C.6/53/L.4, annex I.

[c] See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* and corrigendum (A/57/37 and Corr.1), annex V.B.

Annex III

Informal summary by the Chairman of an exchange of views in the Working Group

1. During the deliberations in the Working Group, one delegation, while condemning terrorism in all its forms and manifestations, made reference to recent acts against a Member State and an elected member of the Security Council that were characterized as inconsistent with international law and a violation of State sovereignty. Furthermore, while expressing support for the work of the Working Group within its mandate, it emphasized the need for a clear definition distinguishing terrorism from the legitimate struggle of peoples against foreign occupation and alien domination.

2. In the exercise of its right of reply, another delegation expressed the view that a measured defensive response by a State should not be equated to attacks against innocent civilians, which could not be justified under any circumstances. That delegation further stressed that the focus of the Working Group should be confined to technical issues relating to the law enforcement instruments under its consideration.

3. The former delegation responded that the question of the use of force by the military forces of a State was directly related to the issues addressed in article 18 of the draft comprehensive convention.